

DEPARTMENT OF STATE
Public Affairs Overseas Program Staff

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Special Guidance - 1 (NS)

Retain or Destroy

The Occupation Statute for Germany (Preparatory)

In view of strong German reaction to the proposed establishment of the Ruhr Authority and in view of increasing German frankness in criticizing the occupation powers, early attempts should be made to prepare the Germans for the impact of the Occupation Statute prior to its publication and as an explanation of the Statute to other areas. (VOUSA might take its peg from the frequent press reports on this subject coming out of Germany).

1. Point out that the basic purpose of the Occupation Statute is:
 - a. to inform the German people fully and precisely as to their position and the extent of their rights vis-a-vis the Occupation Powers, and to define the extent of control the Occupation Powers will continue to exercise, -- something German spokesmen have been demanding for a long time.
 - b. to determine the scope of authority which the future German government may exercise within its framework, as a basis and a beginning for Germany's recovering the status of an independent nation.

With regard to a, point out that the principal objective of the Statute will be to reestablish a basic framework of legal security for the individual German. ("Rechtssicherheit," as against the prevailing "Rechtsunsicherheit" about which Germans have been rightly complaining). It will be worth recalling that such security as is natural under any lawful government has been unknown in Germany

C O N F I D E N T I A L

- 2 -

in Germany since Hitler came to power. We may admit openly that the assumption of power by the victorious allies has inevitably created a state of affairs in which the rights of the individual German vis-a-vis the occupation powers, and extent of authority to be exercised by the existing German administrations and governments has been in need of re-definition. The Occupation Statute is to accomplish this purpose. We might admit that such re-definition has long been needed, but might, in partial explanation of the delay, point out to the implicit difficulties of the task, including the problems of obtaining full coordination of views among the three Western Allied governments.

While avoiding the appearance of boasting on a matter of principles that are natural to Western democracy, we might illustrate the significance of the Statute by referring to the conditions of total legal insecurity before the whims of the occupation powers which prevails in the Soviet Zone.

2. Point out that the Occupation Powers continue to carry responsibility before their own countries and their allies to assure that Germany will never again be a threat to peace, and that this responsibility involves the retention, for the time being, of certain basic powers and controls.

3. The Occupation Statute should be presented as another installment in this process of gradually restoring powers of government to the German people, with a view toward an eventual peace treaty. Without speculating as to the contents of the statute prior to its release, German hope for sweeping powers should be held down by emphasizing that it cannot be expected that the Occupation Authorities will relinquish a substantial part of their powers until a time when the German state has proved its peaceful and democratic nature and has demonstrated its ability to become a helpful member of the European family of nations.

- 3 -

nations. The idea should also be brought home to the German public that the attainment of these objectives is nothing that can be expected to happen overnight, but will take considerable time.

4. By way of counteracting current German tendencies to question the authority of the occupation powers through legalistic arguments on the validity of Germany's unconditional surrender, point out (without stooping to quibbling):

- a. that the succession of the allies to the authority formerly held by the Nazi government was the logical result of the latter's total defeat and unconditional surrender in 1945-- a fact which is an inescapable political reality that cannot be rationalized away by any legalistic arguments.
- b. that the allies consider themselves bound by standards of law and common decency, as incorporated in allied agreements agreements and policy objectives, but the Hague Convention defining relations between belligerents has no applicability to Germany in its status following unconditional surrender.

5. The above points may also be presented in this manner to non-German areas.

6. Further guidance will accompany final text prior to release.

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